

AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE JULY 1, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 569**

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**Introduced by Assembly Member Duvall Members Emerson and Solorio**  
(Principal coauthor: Senator Correa)

February 25, 2009

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~~An act to amend Section 512 of the Labor Code, relating to employment. An act to add Section 6612 to, and to add and repeal Sections 10186 and 10187 of, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 569, as amended, ~~Duvall Emerson. Meal periods: exemptions. Public contracts: disabled veteran business enterprise: small business enterprise.~~

~~Existing law prohibits, subject to certain exceptions, an employer from requiring an employee to work more than 5 hours per day without providing a meal period and, notwithstanding that provision, authorizes the Industrial Welfare Commission to adopt a working condition order permitting a meal period to commence after 6 hours of work if the order is consistent with the health and welfare of affected employees. Under existing law, state agencies and all other state entities contracting for~~

*materials, supplies, equipment, alteration, repair, or improvement are required to meet specified participation goals for disabled veteran business enterprises and small business enterprises.*

*This bill would ~~exempt from these provisions employees in a construction occupation and commercial drivers in the transportation industry who are covered by a valid collective bargaining agreement containing specified terms, including meal period provisions. It would specify that its provisions do not affect the requirements for meal periods for employees or employers in industries other than those described in the bill~~ provide that, for any contract advertised by a state agency or department on or before July 28, 2009, the state agency or department shall award the contract to the lowest responsible bidder meeting or making a good faith effort to meet existing disabled veteran business enterprise goals. This bill would also, until January 1, 2015, authorize awarding departments, as defined, to solicit bids solely from disabled veteran business enterprises and small business enterprises where the construction contract is for \$1,000,000 or less. This bill would additionally require departments, until January 1, 2015, when awarding a public works contract to the lowest responsible bidder, to consider the efforts of a bidder to meet the disabled veteran business enterprise goals, subject to specified documentation required of the responding bidder.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~<sup>no</sup>.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6612 is added to the Public Contract
- 2     Code, to read:
- 3     6612. For any contract advertised on or before July 28, 2009,
- 4     the state agency or department shall award the contract to the
- 5     lowest responsible bidder meeting or making a good faith effort
- 6     to meet the disabled veteran business enterprise goals established
- 7     pursuant to Article 6 (commencing with Section 999) of Chapter
- 8     6 of Division 4 of the Military and Veterans Code.
- 9     SEC. 2. Section 10186 is added to the Public Contract Code,
- 10    to read:

1     10186. (a) When soliciting bids for a construction contract  
2     subject to this chapter of one million dollars (\$1,000,000) or less,  
3     the awarding department may, at its discretion, solicit bids solely  
4     from disabled veteran business enterprises and small business  
5     enterprises.

6     (b) In the event no bids are received from disabled veteran  
7     business enterprises or small business enterprises, the awarding  
8     department may immediately solicit for bids for the contract  
9     generally and award the contract to the lowest responsible bidder  
10    without regard to standing as a disabled veteran business  
11    enterprise or a small business enterprise.

12    (c) For purposes of this section, “awarding department” means  
13    any state agency, department, governmental entity, or other officer  
14    or entity empowered by law to enter into contracts on behalf of  
15    the State of California.

16    (d) This section shall become inoperative on December 31,  
17    2014, and on January 1, 2015, is repealed.

18    SEC. 3. Section 10187 is added to the Public Contract Code,  
19    to read:

20    10187. (a) In awarding a public works contract subject to this  
21    chapter to the lowest responsible bidder, the awarding department  
22    shall consider the efforts of a bidder to meet the disabled veteran  
23    business enterprise goals established pursuant to Article 6  
24    (commencing with Section 999) of Chapter 6 of Division 4 of the  
25    Military and Veterans Code. The awarding department shall award  
26    the contract to the lowest responsible bidder meeting or  
27    documenting specific efforts to meet these goals.

28    (b) A bidder shall be deemed to have met the specific effort  
29    requirements upon submittal, within the time limits specified by  
30    the awarding department, of documentary evidence that the  
31    following actions were taken:

32    (1) Contact was made with the awarding department and a  
33    search was conducted on the Department of General Services’,  
34    California certified disabled veteran business enterprise database  
35    to identify disabled veteran business enterprises specific to the  
36    contract.

37    (2) Sufficient work was made available to disabled veteran  
38    business enterprises to meet the contract goal.

(3) Subcontract bids were solicited from disabled veteran business enterprise firms. When soliciting subcontractor bids, the bidder shall do the following:

(A) Provide interested disabled veteran business enterprises with information, including, but not limited to, identification of the work available, the date the disabled veteran business enterprise's bid was due to the bidder, the specified bonding and licensing requirements, and the prime contractor's contact person.

(B) Give disabled veteran business enterprises a reasonable time to respond to a solicitation. A seven-calendar-day response time shall be presumed to be reasonable.

(C) Utilize various contact methods, including, but not limited to, published advertising, by telephone, e-mail, fax, or United States mail.

(D) Provide the awarding department with all disabled veteran business enterprise bids received. If a bid of a disabled veteran business enterprise is rejected, provide the bid of the selected nondisabled veteran business enterprise and the reasons for rejecting the disabled veteran business enterprise bid.

(c) For purposes of this section, "awarding department" means any state agency, department, governmental entity, or other officer or entity empowered by law to enter into contracts on behalf of the State of California.

(d) This section shall become inoperative on December 31, 2014, and on January 1, 2015, is repealed.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to eliminate confusion with regard to the bidding process for state contracts as soon as possible, thus preserving the quality of work provided and the health and safety of the citizens of California, it is necessary that this act take effect immediately.

~~SECTION 1. Section 512 of the Labor Code is amended to read:~~

~~512. (a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more~~

1 than six hours, the meal period may be waived by mutual consent  
2 of both the employer and employee. An employer may not employ  
3 an employee for a work period of more than 10 hours per day  
4 without providing the employee with a second meal period of not  
5 less than 30 minutes, except that if the total hours worked is no  
6 more than 12 hours, the second meal period may be waived by  
7 mutual consent of the employer and the employee only if the first  
8 meal period was not waived.

9 (b) Notwithstanding subdivision (a), the Industrial Welfare  
10 Commission may adopt a working condition order permitting a  
11 meal period to commence after six hours of work if the commission  
12 determines that the order is consistent with the health and welfare  
13 of the affected employees.

14 (c) Subdivision (a) does not apply to an employee in the  
15 wholesale baking industry who is subject to an Industrial Welfare  
16 Commission wage order and who is covered by a valid collective  
17 bargaining agreement that provides for a 35-hour workweek  
18 consisting of five 7-hour days, payment of one and one-half times  
19 the regular rate of pay for time worked in excess of seven hours  
20 per day, and a rest period of not less than 10 minutes every two  
21 hours.

22 (d) If an employee in the motion picture industry or the  
23 broadcasting industry, as those industries are defined in Industrial  
24 Welfare Commission Wage Order Numbers 11 and 12, is covered  
25 by a valid collective bargaining agreement that provides for meal  
26 periods and includes a monetary remedy if the employee does not  
27 receive a meal period required by the agreement, then the terms,  
28 conditions, and remedies of the agreement pertaining to meal  
29 periods apply in lieu of the applicable provisions pertaining to  
30 meal periods of subdivision (a) of this section, Section 226.7, and  
31 Industrial Welfare Commission Wage Order Numbers 11 and 12.

32 (e) Subdivisions (a) and (b) do not apply to an employee  
33 employed in a construction occupation or to an employee employed  
34 as a commercial driver in the transportation industry if both of the  
35 following conditions are satisfied:

36 (1) The employee is covered by a valid collective bargaining  
37 agreement.

38 (2) The valid collective bargaining agreement expressly provides  
39 for the wages, hours of work, and working conditions of  
40 employees, and expressly provides for meal periods for those

1 ~~employees, final and binding arbitration of disputes concerning~~  
2 ~~application of its meal period provisions, premium wage rates for~~  
3 ~~all overtime hours worked, and a regular hourly rate of pay of not~~  
4 ~~less than 30 percent more than the state minimum wage rate.~~

5 ~~(f) The following definitions apply for the purposes of this~~  
6 ~~section:~~

7 ~~(1) “Commercial driver” means an employee who operates a~~  
8 ~~vehicle described in subdivision (b) of Section 15210 of the Vehicle~~  
9 ~~Code.~~

10 ~~(2) “Construction occupation” means all job classifications~~  
11 ~~associated with construction by Article 2 (commencing with~~  
12 ~~Section 7025) of Chapter 9 of Division 3 of the Business and~~  
13 ~~Professions Code, including work involving alteration, demolition,~~  
14 ~~building, excavation, renovation, remodeling, maintenance,~~  
15 ~~improvement, and repair, and any other similar or related~~  
16 ~~occupation or trade.~~

17 ~~SEC. 2. Notwithstanding any other provision of law,~~  
18 ~~subdivision (c) of Section 512 of the Labor Code does not affect~~  
19 ~~the nature or scope of the law related to meal periods, including~~  
20 ~~the timing of commencement of a meal period, for employees or~~  
21 ~~employers not specifically covered by subdivision (c) of Section~~  
22 ~~512 of the Labor Code.~~